

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

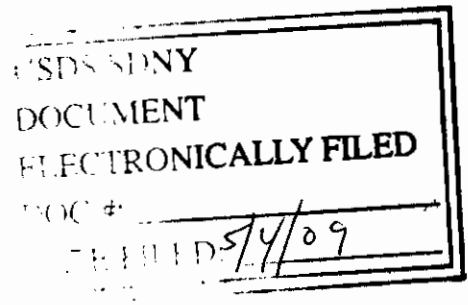
RSL COMMUNICATIONS, PLC,

Plaintiff,

-v-

NESIM BILDIRICI, *et al.*,

Defendants.



No. 04 Civ. 5217 (RJS)  
ORDER

RICHARD J. SULLIVAN, District Judge:


The Court is in receipt of the parties' supplemental memoranda regarding the causation element of Plaintiff's claims. In its submission, Plaintiff continues to argue that "the proper test for causation for breach of fiduciary duty claims under New York law is whether the defendants' actions or inactions were a 'substantial factor' in causing damages." (Pl.'s Supp. Mem. at 1.) However, in light of the authority cited in the Court's February 23, 2009 Order (Doc. No. 86), the Court is not persuaded.

Where, as here, "the remedy sought is damages to compensate for a claimant's loss, the usual damages-causation rule for tort and contract breach cases is appropriate . . . ." *Am. Fed. Group, Ltd. v. Rothenberg*, 136 F.3d 897, 907 n.7 (2d Cir. 1998); *see also LNC Invs., Inc. v. First Fidelity Bank, N.A. New Jersey*, 173 F.3d 454, 465-66 (2d Cir. 1999). "Causation of course has two major components: cause-in-fact, or 'but-for' cause, and proximate cause." *Semi-Tech Litig., LLC v. Bankers Trust Co.*, 353 F. Supp. 2d 460, 482 (S.D.N.Y. 2005), *aff'd*, *In re Bankers Trust Co.*, 450 F.3d 121 (2d Cir. 2006). Therefore, the Court will apply this standard in resolving the parties' motions for summary judgment.

In a footnote in its supplemental memorandum regarding causation, Plaintiff “reserve[d] its right to file a motion to either reopen discovery or to supplement the summary judgment record.” (Pl.’s Supp. Mem. at 10 n.8.) Therefore, if Plaintiff wishes to file such a motion, it shall submit a pre-motion letter pursuant to Rule 2.A of my Individual Practices by May 11, 2009. The letter shall set forth the bases for the motion, and specifically describe any additional discovery Plaintiff wishes to conduct. Defendants shall respond to Plaintiff’s pre-motion letter within three business days after they receive it.

SO ORDERED.

Dated: May 4, 2009  
New York, New York



RICHARD J. SULLIVAN  
UNITED STATES DISTRICT JUDGE